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OFFICE OF PETITIONS

In re Application of	:	
Settelmayer et al.	:	DECISION ON PETITION
Application No. 10/767,398	:	
Filed: January 28, 2004	:	
Attorney Docket No. YAK 382	:	

This is a decision on the "Petition to Correct Filing Receipt and Reply to Response to Request For Corrected Filing Receipt," filed August 17, 2005.

Applicant asserts that the USPTO incorrectly entered the domestic priority data for the above-identified application. Specifically, applicant states that on January 28, 2004, applicant filed the present application and, in the "Cross-Reference to Related Applications," claimed benefit of provisional application No. 60/443,487, filed January 28, 2003. Applicant avers that the filing receipt incorrectly lists the filing date of provisional application No. 60/443,487 as January 29, 2003, in the "Domestic Priority data as claimed by applicant." Applicant requests that the Office correct the domestic priority data to indicate that provisional application No. 60/443,487 was filed on January 28, 2003, instead of January 29, 2003.

A review of the record indicates that applicant referenced the wrong provisional application number in the "Cross Reference to Related Applications." Applicant incorrectly identified the prior-filed provisional application as No. 60/443,487,¹ instead of No. 60/443,437.

Accordingly, applicant caused the error in the domestic priority data for this application. Therefore, the petition is **dismissed**.

Although the benefit claim was filed within four months from the actual filing date of the present application, applicant referenced an incorrect provisional application number. Therefore, if applicant wishes to correct the provisional application number, applicant must file a petition

¹ Provisional application No. 60/443,487, entitled "EXPANDABLE BORE INJECTION NEEDLE," was filed on January 29, 2003. Thus, the incorrect domestic priority information listed on the filing receipt was not the result of any USPTO error.

under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior-filed provisional application No. 60/443,437, filed on January 28, 2003.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(5)(ii). In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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